IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2453 OF 1997

Pramod Devaram Bhangale
Headmaster, Vidya Prasarak Mandal's
Secondary School, Balkum,
Dist: Thane. ...Petitioner

Vs.

1. State of Maharashtra
2. Education Officer (Secondary)
   Zilla Parishad, Thane.
3. Vidya Prasarak Sanstha
   Balkum (District Thane)
4. Vidya Prasarak Sanstha's Vidyalaya
   Balkum- Thane 400608
5. Arvind Ramchandra Bhalerao, Supervisor
   Vidya Prasarak Sanstha's Vidyalaya,
   Balkum, Thane- 400608. ...Respondents

Ms.Betty D'Souza & Brenda D'Souza i/b. M.M.Vashi for Petitioner
Mr. Chinchalikar A.G.P. for Respondents 1 & 2
Mr. Arvind Ramchandra Bhalerao, Respondent No.5 in person
None for Respondents 3 to 5.

CORAM: R.M.S. KHANDEPARKAR &
SMT. ROSHAN DALVI, JJ.
DATED : 22 ND MARCH 2006.
ORAL JUDGMENT (PER R.M.S.KHANDEPARKAR,J.)

1. Heard.

2. The Petitioner challenges the order dated 18th February, 1997 passed by the Education Officer, Zilla Parishad fixing the seniority of the Petitioner below the Respondent No.5. The challenge is on the ground that the same is in contravention of the provisions of law applicable to the parties.

3. Few facts relevant for the decision are that the Petitioner was appointed as the Assistant Teacher in the Respondent No.4's High School on 9th June 1980. He was thereafter appointed as the Head Master of the said High School on 31st October 1996. Further he was appointed as the Head of the School on 4th November 1996. The Respondent No.5 was appointed as the Assistant Teacher on 15th June, 1981.

4. The Petitioner acquired the qualification of D.Ed. in the year 1977, of B.Ed. in the year 1984 and further qualification of M.Ed. in 1994, while the 5th Respondent acquired the qualification of H.D.Ed. In 1980.

5. The qualification of H.D.Ed. is equivalent to B.Ed. in terms of the Government Circular No.PHE/1070/12490 (1) (C) dated 1st January, 1971.

6. As there was a dispute regarding seniority between the Petitioner and Respondent No.5 , the same was referred for decision of the Education Officer, Thane, who after hearing the parties held that the Respondent No.5 is senior to the Petitioner on the ground that the Respondent No.5 acquired the qualification of H.D.Ed. in the year 1980 which is equivalent to B.Ed. prior to the Petitioner's acquiring B.Ed. in the year 1984, and therefore, when the respondent no.5 was appointed he was a trained graduate and the same was prior to the petitioner becoming trained graduate. Obviously the Education Officer referred to the appointment of the parties in relation to they acquiring training qualification and not with reference to their initial appointment in the service of the Respondent No.4.

7. Upon hearing the learned Advocates for the parties and on perusal of the records, it is not in dispute that the seniority of the parties is required to be decided with reference to the Rule 12 of the

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 hereinafter called as "the said Rules". The Rule 12 provides that :-

> " Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and non-teaching staff in the School in accordance with the guidelines laid down in Schedule"F". "

The Clause 1 of the Schedule F under Rule 12 of the said Rules reads thus :-

"1. Guidelines for fixation of seniority of teachers in the primary schools:-

The seniority of primary school teachers in Primary Schools shall be based on the date of joining service and continuous officiation."

The Clause 2 of the Schedule F under Rule 12 of the said Rules reads thus :-

> "2. The guidelines for fixation of seniority of teachers: in the secondary schools Junior Colleges of Education and Junior College Classes

attached to secondary schools and Senior Colleges the Teacher should be categorised as follows :

Category A: Heads of Secondary Schools having an enrollment of students above 500 and Principals of Junior Colleges of Education having more than four Divisions on the basis of the dates of their appointments to the respective posts.

Category B: Heads of secondary schools having an enrollment of students of 500 and below, Principals of Junior Colleges of Education having four or less Divisions and Assistant Heads of Secondary schools having more than 20 classes on the basis of the dates of their appointments to the respective posts.

Category C : Holders of -

M.A/M.Sc./M.Com.,B.T./B.Ed., or its equivalent; or

B.A.B.T./B.Sc./B.Com.B.T./B.Ed., or its equivalent; or

B.A./B.Sc./ B.Com.Dip.T.(old two years Course); or

B.A./B.Sc./B.Com.,S.T.C/Dip.Ed./Dip.T. (one year course) with 10 years post S.T.C.etc. Service.

1(B.A. Or its equivalent plus Senior Hindi Shikshak Sanad with five years service: or Junior Hindi Shikshak with ten years service, 2(after obtaining both academic and training qualifications.)

Category D : Holders of -

B.A.,B.Sc./B.Com./S.T.C./Dip.Ed.(one year course) (Senior or Junior Hindi Shikshak Sanad) or its equivalent.**”**

8. Plain reading of the Rule 12 as quoted above would reveal that the seniority of the teachers in the secondary school has to be prepared in accordance with the guidelines prescribed in the Schedule F of the said rules. The said guidelines comprise under the Schedule F clearly disclose that the seniority of the teachers has to be primarily decided with reference to their dates of appointment in the respective posts. When there is more than one teacher in a similar post, the seniority will have to be decided with reference to the categories mentioned in the Schedule F. Having so considered the claim of the

Assistant teachers for the seniority, a person who is appointed prior to another will automatically be the senior in the list. However, if 2 persons are appointed on the same day, certainly their seniority will have to be decided with reference to the guidelines comprised under category `C' and in that case the educational qualification of the appointee on the date of appointment would be a relevant factor to be taken into consideration.

9. In the case in hand, undisputedly, the Petitioner as well as the Respondent No.5 were appointed as the Assistant Teachers, the Petitioner being so appointed on 9th June 1980 whereas the Respondent No.5 being appointed on 15th June, 1981. At the time of their appointment, both the teachers were holders of degree qualification, in addition, the Petitioner had D.Ed qualification to his credit, while the Respondent was the holder of H.D.Ed qualification. Undoubtedly, the Respondent No.5 acquired H. D.Ed. qualification prior to the Petitioner acquiring B.Ed. degree. But, the Petitioner was already holder of D.Ed qualification. Besides, mere acquisition of the training qualification cannot be a justification for giving seniority to the Respondent No.5 over the Petitioner.

Indeed the law in that regard is well settled by the decision of the Division Bench of this Court in the matter of Dominic Araujo Vs. State of Goa and others reported in 1989, Maharashtra Law Journal, 538 of Goa, Daman And Diu School Education Act, 1984 and Grant-in-aid Code and the Rules made thereunder. As also, plain reading of the meaning comprised under Rule 12 of the M.E.P.S. Rules and the guidelines laid down under Schedule `F' would reveal that the seniority is to be considered on the basis of the date of appointment. The question of consideration of educational qualification would arise only in case when two or more persons are appointed on the same day and then the seniority in such appointees is required to be decided according to 'C' Category of the Schedule F. That being not the case in the matter in hand and the appointment has been done on two different dates and the Petitioner having been appointed prior to the Respondent No.5, obviously the Petitioner will stand first in the seniority list. Apparently the Education Officer has totally misconstrued the Rule 12 while fixing the seniority of the Petitioner and the Respondent No.5 under the impugned order.

10. For the reasons stated above, therefore, the impugned order is liable to be set aside holding that the the Petitioner is senior to the Respondent no.5 considering that the Petitioner was appointed on 9th June 1980 and the appointment of Respondent No.5 was on 15th June, 1981 and bearing in mind the Rule 12 of the said Rules read as in the schedule F. The Petition, therefore, succeeds. Rule is made absolute in above terms while quashing the order of the Education Officer, with no order as to costs.

(SMT.ROSHAN DALVI, J.) (R.M.S.KHANDEPARKAR, J)